

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 28

FISCAL
NOTE

By Senator Smith

[Introduced January 11, 2023; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §22-15-25; and to amend said code by adding thereto a new section,
3 designated §61-3-45b, all relating to nonferrous metal sales and transportation to a
4 secondary recycler; providing for definitions; providing for permits for secondary metals
5 recyclers to purchase nonferrous metals; providing for permit requirements for fixed and
6 nonfixed sites; providing that the Superintendent of the West Virginia State Police shall
7 develop applications and permits; providing for a permit fee for secondary metals
8 recyclers; providing that a secondary metals recycler permit to purchase nonferrous
9 metals is valid for two years; providing for a permit for persons or entities to sell or transport
10 nonferrous metals over the highways; providing a fee for a replacement permit for a lost or
11 destroyed original permit; providing for record retention criteria; providing that a seller or
12 transportation permit is valid for two years; providing for denial, revocation, or suspension
13 of a permit for violations of law and for penalties; providing that only secondary metals
14 recyclers can purchase nonferrous metals from persons or entities with a valid permit;
15 providing that secondary metals recyclers shall retain records of all purchases of
16 nonferrous metals; providing for record retention of at least one year; providing for a limit
17 for secondary metals recyclers purchasing nonferrous metals through cash transactions;
18 providing for signage to be displayed; providing for penalties when a secondary metals
19 recycler violates certain provisions; providing for limitations on selling nonferrous metals;
20 providing for penalties for sellers violating certain provisions relating to selling nonferrous
21 metals; providing for revocation of permits for secondary metals recyclers and sellers
22 violating certain provisions of purchasing or selling nonferrous metals; providing for holds
23 placed on stolen nonferrous metals; providing for law enforcement to issue written notice
24 to a secondary metals recycler relating to stolen nonferrous metals; providing for a 15
25 calendar day hold for the secondary metals recycler to retain the nonferrous metals as
26 provided in the written notice from law enforcement; providing that law enforcement

27 provide written notice to the secondary metals recycler relating to allegedly stolen
28 nonferrous metals; providing for 30 calendar days for an extended hold of allegedly stolen
29 nonferrous metals by the secondary metals recycler; providing for automatic release of any
30 holds if no order has been received to retain the nonferrous metals by a court; providing for
31 limitations on transporting nonferrous metals on the highways of this state without a valid
32 permit and penalties for violating transportation requirements; providing for revocation of a
33 transportation permit; providing for exemptions from required permits to obtain, transport,
34 or sell nonferrous metals to a secondary metals recycler; providing for preemption of other
35 laws, rules, or regulations by any county or municipality; providing for additional criminal
36 offenses for illegally obtaining nonferrous metals; providing for penalties to property
37 damage when the damage is below \$5,000; providing for penalties for property damage
38 when the damage is greater than or equal to \$5,000; providing for penalties when another
39 person receives a great bodily injury during the course of illegally obtaining nonferrous
40 metals; providing for penalties when illegally obtaining nonferrous metals results in the
41 death of a person; providing for penalties for disruption of communication or electrical
42 services to more than 10 people; providing for revocation of a permit upon conviction for
43 illegally obtaining nonferrous metals; providing immunity from civil liability to the owner of
44 real or personal property for any injury sustained by a person attempting to or obtaining
45 nonferrous metals illegally, or for any injury caused by dangerous conditions to a person
46 attempting to or obtaining nonferrous metals illegally; providing that no duty of care is
47 expected of an owner of real or personal property to persons attempting to or obtaining
48 nonferrous metals illegally; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-25. Secondary metals recycler permit to purchase nonferrous metals; permit to transport and sell nonferrous metals; violations; penalties; records; notice; preemption; rulemaking.

1 (a) Definitions. — For purposes of this section:

2 "Coil" means a copper, aluminum, or aluminum-copper condensing coil or evaporation coil.

3 The term includes, but is not limited to, coil from a commercial or residential heating or air-
4 conditioning system. The term does not include coil from a window air-conditioning system, if the
5 coil is contained within the system, or coil from an automobile condenser.

6 "Fixed site" means a site occupied by a secondary metals recycler as the owner of the site
7 or as a lessee of the site under a lease or other rental agreement providing for occupation of the
8 site by a secondary metals recycler for a total duration of not less than 364 days.

9 "Nonferrous metals" means metals not containing significant quantities of iron or steel,
10 including, but not limited to, copper wire, copper-clad steel wire, copper pipe, copper bars, copper
11 sheeting, aluminum other than aluminum cans, a product that is a mixture of aluminum and
12 copper, catalytic converters, lead-acid batteries, steel propane gas tanks, and stainless steel beer
13 kegs or containers.

14 "Secondary metals recycler" means a person or entity who is engaged, from a fixed site or
15 otherwise, in the business of paying compensation for nonferrous metals that have served their
16 original economic purpose, whether or not the person is engaged in the business of performing the
17 manufacturing process by which nonferrous metals are converted into raw material products
18 consisting of prepared grades and having an existing or potential economic value.

19 (b) Permit required for secondary metal recycler. —

20 (1) A secondary metals recycler shall obtain a permit to purchase nonferrous metals. A
21 secondary metals recycler's employee is not required to obtain a separate permit to purchase
22 nonferrous metals: *Provided*, That the employee is acting within the scope and duties of their
23 employment with the secondary metals recycler. A secondary metals recycler's employee who

24 intends to purchase nonferrous metals on behalf of the secondary metals recycler at a location
25 other than a fixed site shall have a copy of the secondary metals recycler's permit readily available
26 for inspection.

27 (2) If a secondary metals recycler intends to purchase nonferrous metals at a fixed site or
28 fixed sites, the secondary metals recycler shall obtain a permit from the sheriff of the county in
29 which each of the secondary metals recycler's fixed sites are located. The sheriff may issue the
30 permit to the secondary metals recycler, if the secondary metals recycler:

31 (A) Has a fixed site or fixed sites in any county or counties of this state;

32 (B) Has not been convicted of a violation of §61-3-45b of this code or this section; and

33 (C) Declares on an application provided by the sheriff that the secondary metals recycler is
34 informed of and shall comply with this section.

35 (3) If a secondary metals recycler intends to purchase nonferrous metals at a location other
36 than a fixed site, the secondary metals recycler shall obtain a permit from the sheriff for each
37 county in which the secondary metals recycler intends to purchase nonferrous metals. The sheriff
38 may issue the permit to the secondary metals recycler if the secondary metals recycler:

39 (A) Can sufficiently demonstrate to the sheriff the secondary metals recycler's ability to
40 comply with the provisions of this section;

41 (B) Has not been convicted of a violation of §61-3-45b of this code or this section; and

42 (C) Declares on an application provided by the sheriff that the secondary metals recycler is
43 informed of and shall comply with this section.

44 (4) The Superintendent of the West Virginia State Police, in cooperation with the West
45 Virginia Sheriff's Bureau of Professional Standards, shall develop uniform applications and
46 permits.

47 (5) The sheriff may investigate a secondary metals recycler's background prior to issuing a
48 permit for purposes of determining if the secondary metals recycler qualifies to be issued a permit.

49 (6) The sheriff may charge and retain a \$200 fee for each permit.

50 (7) The sheriff shall keep a record of all permits issued containing, at a minimum, the date
51 of issuance, and the name and address of the secondary metals recycler.

52 (8) A permit is valid for 24 months.

53 (9) A permit may be denied, suspended, or revoked at any time if the sheriff discovers that
54 the information on an application is inaccurate, a secondary metals recycler does not comply with
55 the requirements of this section, or a secondary metals recycler is convicted of a violation of §61-
56 3-45b of this code or this section.

57 (10) The sheriff shall issue permits during regular business hours.

58 (11) The sheriff shall, immediately after the permit is issued, provide the Superintendent of
59 the West Virginia State Police a copy of the approved application. The sheriff shall provide to the
60 Superintendent of the West Virginia State Police, at any time so requested, a certified list of all
61 permits issued in the county. The Superintendent of the West Virginia State Police shall maintain a
62 registry of all secondary metals recyclers who have been issued permits.

63 (c) *Permit required to transport materials.* —

64 (1) A person or entity who wants to transport or sell nonferrous metals to a secondary
65 metals recycler shall obtain a permit to transport and sell the nonferrous metals from the sheriff. An
66 entity's employee is not required to obtain a separate permit to transport or sell nonferrous metals:
67 *Provided*, That the employee is acting within the scope and duties of their employment with the
68 entity. An entity's employee who intends to transport and sell nonferrous metals on behalf of an
69 entity shall have a copy of the entity's permit readily available for inspection.

70 (2) If a person is a resident of West Virginia or an entity is located in West Virginia, the
71 person or entity shall obtain a permit from the sheriff of the county in which the person resides or
72 has a secondary residence or in which the entity is located or has a secondary business. The
73 sheriff may issue the sheriff to the person or entity if the:

74 (A) Person resides or has a secondary residence, or the entity is located or has a
75 secondary business in any county of this state;

76 (B) Person or entity has not been convicted of a violation of §61-3-45b of this code or this
77 section; and

78 (C) Person or entity declares on an application provided by the sheriff that the person or
79 entity is informed of and shall comply with this section and §61-3-45b of this code.

80 (3) If a person is not a resident of West Virginia or an entity is not located in West Virginia,
81 the person or entity shall obtain a permit from the sheriff of any county. The sheriff may issue the
82 permit to the person or entity if the:

83 (A) Person is not a resident of West Virginia or the entity is not located in West Virginia;

84 (B) Person or entity has not been convicted of a violation of §61-3-45b of this code or this
85 section; and

86 (C) Person or entity declares on an application provided by the sheriff that the person or
87 entity is informed of and shall comply with this section and §61-3-45b of this code.

88 (4) The Superintendent of the West Virginia State Police, in cooperation with the West
89 Virginia Sheriff's Bureau of Professional Standards, shall develop uniform applications and
90 permits.

91 (5) The sheriff may investigate a secondary metals recycler's background prior to issuing a
92 permit for purposes of determining if the secondary metals recycler qualifies to be issued a permit.

93 (6) The sheriff may not charge a fee for a permit under this subsection. The sheriff may
94 charge a \$10 fee to replace a permit that has been lost or destroyed. If the original permit is later
95 found by the person or entity, the person or entity shall turn the original permit into the sheriff or
96 destroy the original permit.

97 (7) The sheriff shall keep a record of all permits issued containing, at a minimum, the date
98 of issuance, the name and address of the person or entity, a photocopy of the person's
99 identification or of the employee's identification, and the person's photograph or the entity's
100 employee's photograph.

101 (8) A permit is valid statewide and expires on the person's birth date on the second

102 calendar year after the calendar year in which the permit is issued, or, if the permittee is an entity,
103 the permit expires on the date of issuance on the second calendar year after the calendar year in
104 which the permit is issued.

105 (9) A permit may be denied, suspended, or revoked at any time if the sheriff discovers that
106 the information on an application is inaccurate, a secondary metals recycler does not comply with
107 the requirements of this section, or a secondary metals recycler is convicted of a violation of §61-
108 3-45b of this code or this section.

109 (10)(A) It is unlawful for a person or entity to obtain a permit to transport and sell nonferrous
110 metals for the purpose of transporting or selling stolen nonferrous metals.

111 (B) A person who violates a provision of this subdivision, in this subsection is guilty of a
112 felony and, upon conviction, shall be fined in an amount determined by the court or imprisoned in a
113 state correctional facility not more than 10 years, or both fined and imprisoned. The person's or
114 entity's permit shall be revoked.

115 (11) The sheriff shall issue permits during regular business hours.

116 (12) The sheriff shall, immediately after the permit is issued, provide the Superintendent of
117 the West Virginia State Police a copy of the approved application. The sheriff shall provide to the
118 Superintendent of the West Virginia State Police, at any time so requested, a certified list of all
119 permits issued in the county. The Superintendent of the West Virginia State Police shall maintain a
120 registry of all persons or entities who have been issued permits.

121 (d) *Limitations on purchasing nonferrous metals.* —

122 (1) It is unlawful to purchase nonferrous metals in any amount for the purpose of recycling
123 the nonferrous metals from a seller unless the purchaser is a secondary metals recycler who has a
124 valid permit to purchase nonferrous metals issued pursuant to subsection (b) of this section and
125 the seller has a valid permit to transport and sell nonferrous metals issued pursuant to subsection
126 (c) of this section. A secondary metals recycler may hold a seller's nonferrous metals while the
127 seller obtains a permit to transport and sell nonferrous metals pursuant to subsection (c) of this

128 section.

129 (2) A secondary metals recycler shall maintain a record containing, at a minimum, the date
130 of purchase, the name and address of the seller, a photocopy of the seller's identification, a
131 photocopy of the seller's permit to transport and sell nonferrous metals, if applicable, the license
132 plate number of the seller's motor vehicle, if available, the seller's photograph, the weight and size
133 or other description of the nonferrous metals purchased, the amount paid for the nonferrous
134 metals, and a signed statement from the seller stating that the seller is the rightful owner or is
135 entitled to sell the nonferrous metals being sold. If the secondary metals recycler has the seller's
136 photograph on file, the secondary metals recycler may reference the photograph on file without
137 taking a photograph for each transaction: *Provided*, That the secondary metals recycler shall
138 update the seller's photograph on an annual basis. A secondary metals recycler may use a video
139 of the seller in lieu of a photograph provided the secondary metals recycler maintains the video for
140 at least 120 days. A secondary metals recycler may maintain a record in an electronic database
141 provided that the information is legible and can be accessed by the sheriff upon request.

142 (3) All nonferrous metals that are purchased by and are in the possession of a secondary
143 metals recycler and all records required to be kept by this subsection shall be maintained and kept
144 open for inspection by the sheriff, or his or her designee, or local and state governmental agencies
145 during regular business hours. The records shall be maintained for one year from the date of
146 purchase.

147 (4) A secondary metals recycler may not enter into a cash transaction in payment for the
148 purchase of copper, catalytic converters, or beer kegs, totaling \$25 or more. Payment for the
149 purchase of copper, catalytic converters, or beer kegs, which totals \$25 or more shall be made by
150 check alone issued and made payable to the seller. A secondary metals recycler may neither cash
151 a check issued pursuant to this item nor use an automated teller machine (ATM) or other cash card
152 system in lieu of a check. A secondary metals recycler may not enter into more than one cash
153 transaction per day per seller in payment for the purchase of copper, catalytic converters, or beer

154 kegs.

155 (5) A secondary metals recycler shall prominently display a 20-inch by 30-inch sign in the
156 secondary metals recycler's fixed site that states: "NO NONFERROUS METALS, INCLUDING
157 COPPER, MAY BE PURCHASED BY A SECONDARY METALS RECYCLER FROM A SELLER
158 UNLESS THE SELLER IS A GAS, ELECTRIC, COMMUNICATIONS, WATER, PLUMBING,
159 ELECTRICAL, OR CLIMATE CONDITIONING SERVICE PROVIDER, OR THE SELLER
160 PRESENTS THE SELLER'S VALID PERMIT TO TRANSPORT AND SELL NONFERROUS
161 METALS ISSUED PURSUANT TO §22-15-25 OF THE CODE OF WEST VIRGINA."

162 (6) A purchaser who violates a provision of this subsection:

163 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined not
164 less than \$200 nor more than \$300 or confined in jail not more than 30 days;

165 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined
166 not less than \$400 nor more than \$500 or confined in jail not more than one year, or both fined and
167 confined; and

168 (C) For a third offense or subsequent offense, is guilty of a misdemeanor and, upon
169 conviction, shall be fined not more than \$1,000 or confined in jail not more than three years, or both
170 fined and confined. For an offense to be considered a third or subsequent offense, only those
171 offenses that occurred within a period of 10 years, including, and immediately preceding the date
172 of the last offense, shall constitute a prior offense within the meaning of this subsection.

173 If the purchaser obtained a permit to purchase nonferrous metals pursuant to subsection
174 (b), the permit shall be revoked.

175 (e) *Limitations on selling nonferrous metals.* —

176 (1) It is unlawful to sell nonferrous metals in any amount to a secondary metals recycler
177 unless the secondary metals recycler has a valid permit to purchase nonferrous metals issued
178 pursuant to subsection (b) of this section and the seller has a valid permit to transport and sell
179 nonferrous metals issued pursuant to subsection (c) of this section.

180 (2) A seller who violates a provision of this subsection:

181 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined in an
182 amount determined by the court or confined in jail not more than one year, or both fined and
183 confined;

184 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined
185 not less than \$500 or confined in jail not more than three years, or both fined and confined; and

186 (C) For a third or subsequent offense, is guilty of a felony and, upon conviction, shall be
187 fined not less than \$1,000 or imprisoned in a state correctional facility not more than five years, or
188 both fined and imprisoned.

189 If the seller obtained a permit to transport and sell nonferrous metals pursuant to
190 subsection (c), the permit shall be revoked.

191 (3) It is unlawful to purchase or otherwise acquire nonferrous metals in any amount from a
192 seller who does not have a valid permit to transport and sell nonferrous metals issued pursuant to
193 subsection (c) of this section with the intent to resell the nonferrous metals in any amount to a
194 secondary metals recycler using the purchaser's valid permit to transport and sell nonferrous
195 metals issued pursuant to subsection (c) of this section.

196 (4) A purchaser who violates a provision of this subsection is guilty of a felony and, upon
197 conviction, shall be fined an amount determined by the court or imprisoned in a state correctional
198 facility not more than 10 years, or both fined and imprisoned. The purchaser's permit shall be
199 revoked.

200 (f) Holds on stolen nonferrous metals. —

201 (1) When a law-enforcement officer has reasonable cause to believe that any item of
202 nonferrous metal in the possession of a secondary metals recycler has been stolen, the law-
203 enforcement officer may issue a hold notice to the secondary metals recycler. The hold notice shall
204 be in writing, be delivered to the secondary metals recycler, specifically identify those items of
205 nonferrous metal that are believed to have been stolen and that are subject to the notice, and

206 inform the secondary metals recycler of the information contained in this subsection. Upon receipt
207 of the notice, the secondary metals recycler may not process or remove the items of nonferrous
208 metal identified in the notice, or any portion thereof, from the secondary metal recycler's fixed site
209 for 15 calendar days after receipt of the notice unless released prior to the 15-day period by the
210 law-enforcement officer.

211 (2) No later than the expiration of the 15-day period, a law-enforcement officer may issue a
212 second hold notice to the secondary metals recycler, which shall be an extended hold notice. The
213 extended hold notice shall be in writing, be delivered to the secondary metals recycler, specifically
214 identify those items of nonferrous metal that are believed to have been stolen and that are subject
215 to the extended hold notice, and inform the secondary metals recycler of the information contained
216 in this subsection. Upon receipt of the extended hold notice, the secondary metals recycler may
217 not process or remove the items of nonferrous metal identified in the notice, or any portion thereof,
218 from the secondary metals recycler's fixed site for 30 calendar days after receipt of the extended
219 hold notice unless released prior to the 30-day period by the law- enforcement officer.

220 (3) At the expiration of the hold period or, if extended, at the expiration of the extended hold
221 period, the hold is automatically released, and the secondary metals recycler may dispose of the
222 nonferrous metals unless other disposition has been ordered by a court of competent jurisdiction.

223 (4) A secondary metals recycler who violates a provision of this subsection:

224 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined not
225 less than \$200 nor more than \$300 or confined in jail not more than 30 days;

226 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined
227 not less than \$400 nor more than \$500 or confined in jail not more than one year, or both fined and
228 confined; and

229 (C) For a third or subsequent offense, is guilty of a misdemeanor and, upon conviction,
230 shall be fined not more than \$1,000 or confined in jail not more than three years, or both fined and
231 confined. For an offense to be considered a third or subsequent offense, only those offenses that

232 occurred within a period of 10 years, including, and immediately preceding the date of the last
233 offense shall constitute a prior offense within the meaning of this subsection.

234 The secondary metals recycler's permit to purchase nonferrous metals issued pursuant to
235 subsection (b) of this section shall be revoked.

236 (g) *Transporting nonferrous metals on highways.* —

237 (1) It is unlawful to transport nonferrous metals in a vehicle or have nonferrous metals in a
238 person's possession in a vehicle on the highways of this state, except:

239 (A) The person can present a valid permit to transport and sell nonferrous metals issued
240 pursuant to subsection (c) of this section; or

241 (B) The person can present a valid bill of sale for the nonferrous metals.

242 (2) If a law-enforcement officer determines that one or more of the exceptions listed in
243 subdivision (1) of this subsection applies, or the law-enforcement officer determines that the
244 nonferrous metals are not stolen goods and are in the rightful possession of the person, the law-
245 enforcement officer may not issue a citation for a violation of this subsection.

246 (3) A person who violates a provision of subdivision (1) of this subsection:

247 (A) For a first offense, is guilty of a misdemeanor and, upon conviction, shall be fined not
248 more than \$200 or confined in jail not more than 30 days;

249 (B) For a second offense, is guilty of a misdemeanor and, upon conviction, shall be fined
250 not more than \$500 or confined in jail not more than one year, or both fined and confined; and

251 (C) For a third or subsequent offense, is guilty of a misdemeanor and, upon conviction,
252 shall be fined not more than \$1,000 or confined in jail not more than three years, or both fined and
253 confined. For an offense to be considered a third or subsequent offense, only those offenses that
254 occurred within a period of 10 years, including, and immediately preceding the date of the last
255 offense, shall constitute a prior offense within the meaning of this subsection.

256 (4) If a person transports nonferrous metals that the person knows are stolen in a vehicle or
257 has in the person's possession in a vehicle on the highways of this state nonferrous metals that the

258 person knows are stolen, is operating a vehicle used in the ordinary course of business to
259 transport nonferrous metals that the person knows are stolen, presents a valid or falsified permit to
260 transport and sell nonferrous metals that the person knows are stolen, or presents a valid or
261 falsified bill of sale for nonferrous metals that the person knows to be stolen, the person is guilty of
262 a felony and, upon conviction, shall be fined in the discretion of the court or imprisoned not more
263 than 10 years, or both. If the person obtained a permit to transport and sell nonferrous metals
264 pursuant to subsection (c) of this section, the permit shall be revoked.

265 (h) For purposes of this section, the only acceptable identification is valid:

266 (1) West Virginia driver's license issued by the Division of Motor Vehicles;

267 (2) West Virginia identification card issued by the Division of Motor Vehicles;

268 (3) A driver's license from another state that contains the licensee's picture on the face of
269 the license; or

270 (4) A military identification card.

271 (i) A secondary metals recycler shall not purchase or otherwise acquire:

272 (1) An iron or steel manhole cover;

273 (2) An iron or steel drainage grate; or

274 (3) A coil, unless the seller is an exempted entity pursuant to subsection (j) of this section
275 or the seller presents a bill of sale from a company indicating that the seller acquired the coil as the
276 result of a unit replacement or repair. The bill of sale is sufficient proof of ownership and serves the
277 same purpose as a permit to transport and sell nonferrous metals. A person who presents a
278 falsified bill of sale is guilty of a misdemeanor and, upon conviction, shall be fined an amount
279 determined by the court or confined in jail not more three years, or both fined and confined.

280 (j) Exemptions. —

281 (1) Except as provided, the provisions of this section do not apply to:

282 (A) The purchase or sale of aluminum cans;

283 (B) A transaction between a secondary metals recycler and another secondary metals

284 recycler;

285 (C) A governmental entity;

286 (D) A manufacturing or industrial vendor that generates or sells regulated metals in the
287 ordinary course of its business;

288 (E) A seller who is a holder of a retail license, an authorized wholesaler, an automobile
289 demolisher, a contractor, a real estate broker or property manager, a residential home builder, a
290 demolition contractor, a provider of gas service, electric service, communications service, water
291 service, plumbing service, electrical service, climate conditioning service, core recycling service,
292 appliance repair service, automotive repair service, or electronics repair service; or

293 (F) A seller that is an organization, a corporation, or an association registered with the state
294 as a charitable organization or a nonprofit corporation.

295 (2) An exempted entity listed in subdivision (j)(1) of this section is subject to the provisions
296 of paragraphs (1) and (10) of subsection (c) of this section.

297 A secondary metals recycler shall maintain a record of transactions involving exempted
298 entities listed in subdivision (j)(1) of this section pursuant to subsection (d) of this section, and is
299 subject to the penalty provisions of subsection (d) of this section. Any item of nonferrous metals
300 acquired from an exempted entity listed in subdivision (j)(1) of this section is subject to a hold
301 notice pursuant to (f) of this section.

302 (k) This section preempts local ordinances and regulations governing the purchase, sale,
303 or transportation of nonferrous metals in any amount, except to the extent that such ordinances
304 pertain to zoning or business license fees. Political subdivisions of the state may not enact
305 ordinances or regulations more restrictive than those contained in this section.

306 (l) The Superintendent of the West Virginia State Police may propose rules pursuant to
307 §29A-3-1 et seq. of this code to effectuate the provisions of this section and carry out the intent of
308 this section.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-45b. Obtaining nonferrous metals unlawfully; disruption of communication or electrical service.

1 (a) For purposes of this section, "nonferrous metals" means metals not containing
2 significant quantities of iron or steel, including, but not limited to, copper wire, copper clad steel
3 wire, copper pipe, copper bars, copper sheeting, aluminum other than aluminum cans, a product
4 that is a mixture of aluminum and copper, catalytic converters, lead-acid batteries, steel propane
5 gas tanks, and stainless steel beer kegs or containers.

6 (b) It is unlawful for a person to willfully and maliciously cut, mutilate, deface, or otherwise
7 injure any personal or real property, including any fixtures or improvements, for the purpose of
8 obtaining nonferrous metals in any amount.

9 (c) A person who violates a provision of this section is guilty of a:

10 (1) Misdemeanor and, upon conviction, shall be fined in an amount determined by the court
11 or confined in jail not more than three years, or both fined and confined, if the direct injury to the
12 property, the amount of loss in value to the property, the amount of repairs necessary to return the
13 property to its condition before the act, or the property loss, including fixtures or improvements, is
14 less than \$5,000; or

15 (2) Felony and, upon conviction, shall be fined in an amount determined by the court or
16 imprisoned in a state correctional facility not more than 10 years, or both fined and imprisoned, if
17 the direct injury to the property, the amount of loss in value to the property, the amount of repairs
18 necessary to return the property to its condition before the act, or the property loss, including
19 fixtures or improvements, is \$5,000 or more.

20 (d)(1) A person who violates the provisions of this section and the violation results in great
21 bodily injury to another person is guilty of a felony and, upon conviction, shall be imprisoned in a

22 state correctional facility not more than 15 years. For purposes of this subsection, "great bodily
23 injury" means bodily injury which creates a substantial risk of death or which causes serious,
24 permanent disfigurement, or protracted loss or impairment of the function of any bodily member or
25 organ.

26 (2) A person who violates the provisions of this section and the violation results in the death
27 of another person is guilty of a felony and, upon conviction, shall be imprisoned in a state
28 correctional facility not more than 30 years.

29 (e) A person who violates the provisions of this section and the violation results in
30 disruption of communication or electrical service to critical infrastructure or more than 10
31 customers of the communication or electrical service is guilty of a misdemeanor and, upon
32 conviction, shall in an amount determined by the court or imprisoned not more than three years, or
33 both fined and imprisoned.

34 (f) If a person is convicted of violating the provisions of this section and the person has
35 been issued a permit pursuant to §22-15-25 of this code, the permit shall be revoked.

36 (g)(1) A public or private owner of personal or real property is not civilly liable to a person
37 who is injured during the theft or attempted theft, by the person or a third party of nonferrous
38 metals in any amount.

39 (2) A public or private owner of personal or real property is not civilly liable for a person's
40 injuries caused by a dangerous condition created as a result of the theft or attempted theft of
41 nonferrous metals in any amount, of the owner when the owner of personal or real property did not
42 know and could not have reasonably known of the dangerous condition.

43 (3) This subsection does not create or impose a duty of care upon an owner of personal or
44 real property that would not otherwise exist under common law.